

## **IV. Report on Immigration of Investors**

### **RECOMMENDATION**

BE IT RESOLVED that the American Bar Association favors Federal legislation that would reestablish a legal basis upon which foreign nationals who have invested or are in the process of investing a substantial amount, may legally enter and immigrate to the United States in order to manage and direct their investment as lawful permanent residents and that would also create a new nonimmigrant visa classification for principal investors and their key employees.

### **REPORT**

1. This legislation is needed since it is no longer possible for a foreign national, who has made or who is in the process of making a substantial investment to enter the United States under U.S. immigration laws for the purpose of managing, supervising or directing such activity. Until approximately 1976, it was possible for foreign investors in the United States to immigrate to the United States on a non-preference basis under the numerical limitation or quota system. However, due to the continuing growing visa demand all visa numbers are now allocated among the six preference categories that relate to petitions by close family members of the U.S. citizens or U.S. residents or by U.S. employers who have proven a shortage of qualified, willing and able U.S. workers. No visa numbers presently are, or the foreseeable future will be, left over for non-preference immigrants.
2. Although the form of such legislation may be debated, the need for Federal legislation to facilitate the legal entry of foreign investors into the United States is clear. At a time when many states, cities and other groups are actively trying to encourage foreign investment in the United States, U.S. immigration laws stand as a major barrier to foreign investors and their key employees who may not have any legal basis upon which to enter the United States to manage, direct or supervise such investment.
3. Such paradox was heightened in 1986 with the adoption of the Immigration Reform and Control Act, which among other provisions, created a legal basis by which 350,000 foreign agricultural workers can obtain lawful permanent residency and liberalized other provisions under which unlimited numbers of agricultural workers can enter the United States in temporary or nonimmigrant visa status where there is a proven shortage of U.S. workers. U.S. immigration law has historically provided a generous basis upon which foreign nationals may

obtain legal status through close relatives in the United States, job offers in the United States for which there is a proven shortage of U.S. workers, or by proving they have a reasonable fear of persecution. It makes little sense, nor is it desirable, that a foreign employee may be able to acquire permanent residence status, while the principal investor creating the employment opportunity may be barred from obtaining either permanent or even temporary status in the United States.

4. In order to avoid the over utilization of a limited number of visa numbers by marginal investors, the Federal legislation could condition the rights of the foreign investor to a minimum dollar investment that would have to be maintained for a fixed number of years, and the creation of a fixed number of jobs as a result of such investment.
5. Additionally, Federal legislation is needed to create a new nonimmigrant visa category for foreign investors who wish to come to the United States for a temporary or fixed period of time. Currently, a treaty investor or trader nonimmigrant visa classification is only available to nationals of certain foreign countries with which the United States government has signed treaties of friendship and commerce. For example, under current law, substantial investors from Iran or Pakistan are eligible for nonimmigrant investor visas, but not those investors from Canada, Australia, or India.

### **CONCLUSION**

By means of this recommendation, the American Bar Association can help support legislation that would correct an unintended consequence of the preference system, i.e., the exclusion of foreign investors, and, thereby, encourage foreign investment in the United States that will create new jobs for U.S. citizens.

Respectfully submitted,

Robert S. Rendell  
Chairman